

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON

WAYNE E. PULLINS, et al.,

Plaintiffs,

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Case No. 3:05-cv-082

-vs-

District Judge Thomas M. Rose  
Chief Magistrate Judge Michael R. Merz

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ALICIA EIMICKE, et al.,

Defendants.

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**DECISION AND ORDER MOTION TO STRIKE**

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This case is before the Court on Motion to Strike of Defendants Laura and Brooks Klimley (Doc. No. 46) which Plaintiffs oppose (Doc. No. 47) and as to which the moving Defendants have filed a Reply Memorandum in support (Doc. No. 49). The Klimleys seek to have the Court strike ¶83 of the Third Amended Complaint on the grounds that it contains a total amount of compensatory damages in excess of the amount calculable by adding the investments of various Plaintiffs set forth in the body of the Third Amended Complaint.

In response, Plaintiff admits the amount in ¶83 does, inadvertently, include amounts relating to former Plaintiff Erma Hyser which should not be included and request yet another amendment of the complaint to eliminate her. However, in general they assert the prayer should not be reduced to the degree the moving Defendants seek.

Motions to strike under Fed. R. Civ. P. 12(f) are viewed with disfavor by the federal courts and rarely granted. Wright & Miller, Federal Practice and Procedure: Civil 3d §1380. In particular, such motions are not a proper means to seek dismissal of all or part of a complaint. *Id.* In this

instance, the discrepancies between the individual amounts invested and the total pled in the demand for relief can be thoroughly explored in discovery. There is nothing impertinent or scandalous about the prayer and its admitted inaccuracy is unlikely to prejudice Defendants.

The Motion to Strike is DENIED.

June 9, 2006.

s/ Michael R. Merz  
Chief United States Magistrate Judge